Advisory Action Before the Filing of an Appeal Brief

Application No.	Applicant(s)	
10/799,052	COLE ET AL.	
Examiner	Art Unit	
MIRANDA LE	2167	

-The MALLING DATE of this communication appears on the cover sheet with the correspondence address - THE REPLY PELLE 30 May 2008 PAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. 1. □ The reply was filled after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application is advantant to timely life one of the following priorities (1) an amendment, difficults, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filled within one of the following menods: a priority of the period for reply expires on; (1) the mailing date of this Advisory Action, or (2) the date set fort in the final rejection, whichever is later. In no event, however, will be statutory period for reply was freather and SM MONTHS from the mailing date of this incomplet. The period for reply expires on; (1) the mailing date of this Advisory Action, or (2) the date set fort in the final rejection, whichever is later. In no event, however, will be statutory period for reply expire later than SM MONTHS from the mailing date of the final rejection. Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE		
1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application in pondition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 4.1.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following replections: a ☐ The period for reply expires months from the mailing date of the final rejection. b ☐ The period for reply expires months from the mailing date of the final rejection, whichever is later, in no event, however, will be saturately period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later, in no event, however, will be saturately period for reply expires on: (1) the mailing date of this fail rejection. Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRAL REJECTION. See MPEP 706 67(7). Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee hance been filed is the date for purposes of determining the period of extension and the corresponding amount of the file. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortced statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection of the final reject	The MAILING DATE of this communication appears on the cover	sheet with the correspondence address
application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, within places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 4.1.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.1.14. The reply must be filed within one of the following time periods: a) The period for reply expires	THE REPLY FILED <u>30 May 2008</u> FAILS TO PLACE THIS APPLICATION IN CON	DITION FOR ALLOWANCE.
a) The period for reply expiresmonths from the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. Examiner Note: If box it is checked, check either box (a) or (b) ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION See MPFEP 708.07(f). Extensions of time may be obtained under 37 CFR 1.13(s) and the oppropriate extension fee have been fled is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been fled is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been fled in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filled, may reduce any examed patent tream dejustment. See 37 CFR 1.70(g) and produce any examed patent tream dejustment. See 37 CFR 1.01(g) and produce any examed patent tream adjustment. See 37 CFR 1.01(g) and produce any extension thereof (37 CFR 41.37(g)), to avoid dismissal of the date of filing the Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37(g), be avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filled within the time period set forth in 37 CFR 41.37(g). AMENDMENTS 3.	application, applicant must timely file one of the following replies: (1) an ame application in condition for allowance; (2) a Notice of Appeal (with appeal fee for Continued Examination (RCE) in compliance with 37 CFR 1.114. The rep	ndment, affidavit, or other evidence, which places the) in compliance with 37 CFR 41.31; or (3) a Request
to New Lowers, will be statutory period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no revert, however, will be statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. Examiner Note: if box 1 is checked, check either box (a) or (b) ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. Soe MPEP 76807(f). Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee under 37 CFR 1.136(a) and the period of the seven series of the maining date of the final rejection, even if it may be been filed is the date for purposes of determining the period of catension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in the 300-wit, if checked. Any reply reviewed by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). MONTICE OF APPEAL. I The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 (a), avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set find in 37 CFR 41.37(a). AMENDMENTS I the proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) They raise new issues that would require further consideration and/or search (see NOTE below); (b) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal, and/or (d) They are not deemed to place the application in better form for appeal by materially red		ction.
Extensions of time may be obtained under 37 CFR 1.138(a). The date on which the petition under 37 CFR 1.138(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final fellocation; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patient term adjustment. See 37 CFR 1.704(b). NOTICE OF APPEAL. I The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). AMENDMENTS 3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) They raise new issues that would require further consideration and/or search (see NOTE below); (b) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal, and/or appeal, and/or with a separate, and/or appeal, and/or appeal, and/or continuous districts. NOTE: (See 37 CFR 1.116 and 41.33(a)).	b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) no event, however, will the statutory period for reply expire later than SIX MONTH Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BO	the date set forth in the final rejection, whichever is later. In IS from the mailing date of the final rejection.
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NOTE: (See 37 CFR 1.116 and 41.33(a)). 4.	, , ,	by materially reducing or simplifying the issues for
 4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 5. ☐ Applicant's reply has overcome the following rejection(s): 6. ☐ Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s). 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) allowed: None. Claim(s) objected to: None. Claim(s) rejected: 1-46. Claim(s) withdrawn from consideration: None. AFFIDAVIT OR OTHER EVIDENCE 8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e). 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence filed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1). 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER 11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: Applicants' arguments do not overcome the final rejection. Please see the attached Advisory Action. 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s)	(d) ☐ They present additional claims without canceling a corresponding num	ber of finally rejected claims.
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